

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

John M. Evans, III, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

Yanesh Brothers Construction Co., Inc.;
Charles Yanesh; William Yanesh and
William Yanesh, Jr.

Defendants.

No. _____

**COLECTIVE ACTION COMPLAINT
PURSUANT TO THE FAIR LABOR
STANDARDS ACT, 29 U.S.C. § 201, *et*
*seq.***

Plaintiff, John M. Evans, III ("Plaintiff Evans"), individually, on behalf of all
others similarly situated, and by and through the undersigned attorneys sues the
Defendants, Yanesh Brothers Construction Co., Inc. ("Defendant Yanesh Bros.");
Charles Yanesh ("Defendant Charles Yanesh"); William Yanesh ("Defendant William
Yanesh") and William Yanesh, Jr. ("Defendant William Yanesh, Jr.") and alleges as
follows:

PARTIES

1. At all material times, Plaintiff Evans is an individual residing in Lake
County, Ohio.

1 2. At all material times, Defendant Yanesh Bros. was a corporation duly
2 licensed to transact business in the State of Ohio. Defendant Yanesh Bros. does business,
3 has offices, and/or maintains agents for the transaction of its customary business in Lake
4 County, Ohio.

5
6 3. Plaintiffs bring a collective action under the FLSA to recover the unpaid
7 overtime owed to them individually and on behalf of all other similarly-situated
8 employees, current and former, of Defendants. Members of the Collective Action are
9 referred to as the “Collective Members.”

10
11 4. The Collective Members are all current and former general laborers who
12 were employed by Defendants at any time starting three years before this Complaint was
13 filed, up to the present.

14 5. At all relevant times, Plaintiff Evans and the Collective Members were
15 employees of Defendant Yanesh Bros. At all relevant times, Defendant Yanesh Bros.,
16 acting through its agents, representatives, employees, managers, members, and/or other
17 representatives had the authority to hire and fire employees, supervised and controlled
18 work schedules or the conditions of employment, determined the rate and method of
19 payment, and maintained employment records in connection with Plaintiff Evans’ and the
20 Collective Members’ Employment with Defendant Yanesh Bros. In any event, at all
21 relevant times, Defendant Yanesh Bros. was an employer subject to the Fair Labor
22 Standards Act (FLSA) and employed Plaintiff Evans and the Collective Members.

23
24 6. At all relevant times, Defendant Charles Yanesh owns, operates as a
25 manager of, operates as a member of, and/or possesses a similar interest in Defendant
26
27

1 Yanesh Bros. At all relevant times, Defendant Charles Yanesh had the authority to hire
2 and fire employees, supervised and controlled work schedules or the conditions of
3 employment, determined the rate and method of payment, and maintained employment
4 records in connection with Plaintiff Evans' and the Collective Members' Employment
5 with Defendant Yanesh Bros. In any event, at all relevant times, Defendant Charles
6 Yanesh was an employer subject to the FLSA and employed Plaintiff Evans and the
7 Collective Members.
8

9 7. At all relevant times, Defendant William Yanesh owns, operates as a
10 manager of, operates as a member of, and/or possesses a similar interest in Defendant
11 Yanesh Bros. At all relevant times, Defendant William Yanesh had the authority to hire
12 and fire employees, supervised and controlled work schedules or the conditions of
13 employment, determined the rate and method of payment, and maintained employment
14 records in connection with Plaintiff Evans' and the Collective Members' Employment
15 with Defendant Yanesh Bros. In any event, at all relevant times, Defendant William
16 Yanesh was an employer subject to the FLSA and employed Plaintiff.
17

18 8. At all relevant times, Defendant William Yanesh, Jr. owns, operates as a
19 manager of, operates as a member of, and/or possesses a similar interest in Defendant
20 Yanesh Bros.. At all relevant times, Defendant William Yanesh, Jr. had the authority to
21 hire and fire employees, supervised and controlled work schedules or the conditions of
22 employment, determined the rate and method of payment, and maintained employment
23 records in connection with Plaintiff Evans' and the Collective Members' Employment
24
25
26
27

1 with Defendant Yanesh Bros. In any event, at all relevant times, Defendant William
2 Yanesh, Jr. was an employer subject to the FLSA and employed Plaintiff.

3 9. Upon information and belief, Defendants were and continue to be residents
4 of Lake County, Ohio.

5 10. At all relevant times, Plaintiff and the Collective Members were
6 “employees” of Defendant Yanesh Bros., Defendant Charles Yanesh, Defendant William
7 Yanesh and Defendant William Yanesh, Jr. as defined by 29 U.S.C. § 203(e)(1).
8

9 11. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendant
10 Yanesh Bros., Defendant Charles Yanesh, Defendant William Yanesh and Defendant
11 William Yanesh, Jr.
12

13 12. At all relevant times, Defendant Yanesh Bros., Defendant Charles Yanesh,
14 Defendant William Yanesh and Defendant William Yanesh, Jr. were and continue to be
15 employers as defined by 29 U.S.C. § 203(d).
16

17 13. Defendants individually and/or through an enterprise or agent, directed and
18 exercised control over Plaintiff Evans’ and the Collective Members’ work and wages at
19 all relevant times.
20

21 14. Plaintiff Evan and the Collective Members, in their work for Defendants,
22 were employed by an enterprise engaged in commerce that had annual gross sales of at
23 least \$500,000.
24

25 **JURISDICTION AND VENUE**

26 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
27 29 U.S.C. § 201, *et seq.*

1 16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because
2 acts giving rise to the claims of the Plaintiff Evans and the Collective Members occurred
3 within this judicial district, and Defendants regularly conduct business in and have
4 engaged in the wrongful conduct alleged herein – and, thus, are subject to personal
5 jurisdiction in – this judicial district.
6

7 **BACKGROUND**

8 17. The FLSA was enacted “to protect all covered workers from substandard
9 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
10 728, 739 (1981). Under the FLSA, employers must pay their employees one and one half
11 times their regular rate of pay for all time worked in excess of 40 hours in a regular
12 workweek. See 29 U.S.C. § 207(a).
13

14 **NATURE OF THE CLAIM**

15 18. Defendants own and/or operate Yanesh Brothers Construction Co., Inc., an
16 enterprise located in Lake County, Ohio.
17

18 19. Plaintiff Evans was employed by Defendants from approximately June 1,
19 2014 through approximately August 21, 2017 as a general construction laborer. At all
20 times during his employment with Defendants, Plaintiff was non-exempt from the
21 FLSA’s overtime requirements.
22

23 20. At all times during their employment with Defendant, the Collective
24 Members were non-exempt from the FLSA’s overtime requirements.
25
26
27

1 21. During each and every workweek during which Defendants employed
2 Plaintiff Evans, Plaintiff Evans was paid a single hourly rate, regardless of the amount of
3 hours that Plaintiff Evans worked for Defendants.

4 22. The Collective Members were likewise paid a single hourly rate, regardless
5 of the amount of hours that the Collective Members worked for Defendants in any given
6 workweek.

7
8 23. For the entire duration of Plaintiff Evans' employment with Defendants,
9 Defendants had a consistent policy and practice of requiring Plaintiff Evans to work well
10 in excess of forty (40) hours per week without paying him time and a half for hours
11 worked over forty (40) hours per week.

12
13 24. Defendants likewise had a consistent policy and practice of requiring the
14 Collective Member to work well in excess of forty (40) hours per week without paying
15 them time and a half for hours worked over forty (40) hours per week.

16
17 25. In a given workweek, and during each and every workweek during which
18 Plaintiff Evans and the Collective Members worked for Defendants, Plaintiff Evans and
19 the Collective Members worked in excess of 40 hours without being compensated one
20 and one-half times their regular rate of pay.

21
22 26. As a result of Defendants' failure to pay time and a half to Plaintiff Evans
23 and the Collective Members for hours worked over forty (40) hours per week, Defendants
24 violated 29 U.S.C. § 207(a).

FACTUAL BACKGROUND

27. Defendants hired Plaintiff Evans on or about June 1, 2014 as a general construction laborer. The Collective Members are former and current general laborers employed by Defendants in the past three (3) years prior to the filing of this Complaint.

28. Defendants' employment of Plaintiff Evans concluded on or about August 21, 2017.

29. Plaintiff Evans and the Collective Members were non-exempt employees.

30. Plaintiff Evans and the Collective Members were not managers. They did not have supervisory authority over any employees, did not possess the authority to hire or fire employees, did not possess authority to make critical job decisions with respect to any of Defendants' employees, and did not direct the work of two or more employees.

31. Plaintiff Evans' and the Collective Members' primary duty was not the management of the enterprise in which they were employed or any recognized department of the enterprise and they did not exercise discretion and independent judgment with respect to matters of significance.

32. For the duration of their employment with Defendants, Plaintiff Evans and the Collective Members worked approximately fifty (50) hours per week.

33. From the beginning of Plaintiff Evans' and the Collective Members' employment through the present day, Defendants failed to compensate them one and one-half times their regular rate of pay for any of their overtime hours.

34. Defendants knew that – or acted with reckless disregard as to whether – their refusal or failure to properly compensate Plaintiff Evans and the Collective

1 Members over the course of their employment would violate federal and state law, and
2 Defendants were aware of the FLSA overtime wage requirements during Plaintiff Evans'
3 and the Collective Members' employment. As such, Defendants' conduct constitutes a
4 willful violation of the FLSA.

5
6 35. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
7 Evans and the Collective Members of their rights under the FLSA.

8 36. Plaintiff Evans has given his written consent to be a party Plaintiff in this
9 action pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
10 this Complaint as "**Exhibit A.**"
11

12 **COLLECTIVE ACTION ALLEGATIONS**

13 37. Plaintiff Evans and the Collective Members reallege and incorporate by
14 reference all allegations in all preceding paragraphs.

15
16 38. Plaintiff Evans brings this action pursuant to 29 U.S.C. § 216(b) on his own
17 behalf and as representatives of individuals similarly situated who are current or former
18 general laborers of Defendants.

19 39. Defendants subjected all of their general laborers, including Plaintiff Evans
20 and the Collective Members, to their policy and practice of not paying their general
21 laborers one and one half times their regular rates of pay for time they spent working in
22 excess of 40 hours in a given workweek, in violation of 29 U.S.C. § 207(a).
23

24 40. At all times material, Plaintiff Evans and the Collective Members are and
25 have been similarly situated, have had substantially similar job requirements and pay
26 provisions, and are and have been subject to Defendants' decision, policy, plan, and
27

1 common programs, practices, procedures, protocols, routines, and rules of willfully
2 subjecting Plaintiffs and the Collective Members to their policy and practice of not
3 paying their general laborers one and one half times their regular rates of pay for time
4 they spent working in excess of 40 hours in a given workweek, in violation of 29 U.S.C.
5 § 207(a).
6

7 41. Plaintiff Evans' claims stated in this complaint are essentially the same as
8 those of the Collective Members. This action is properly maintained as a collective action
9 because in all pertinent aspects the employment relationship of individuals similarly
10 situated to Plaintiff Watkins is identical or substantially similar.
11

12 42. Plaintiff Evans and the Collective Members were each compensated on an
13 hourly basis for the duration of their employment with Defendants.
14

15 43. The Collective Members perform or have performed the same or similar
16 work as Plaintiff Evans.
17

18 44. Defendants' failure to pay overtime compensation required by the FLSA
19 results from generally applicable policies or practices, and does not depend on the
20 personal circumstances of Plaintiffs or the Collective Members.
21

22 45. All Collective Members, irrespective of their particular job requirements
23 and job titles, are entitled to proper overtime wage compensation for all hours worked in
24 excess of 40 in a given workweek.
25

26 46. Although the exact amount of damages may vary among the Collective
27 Members, the damages for the Collective Members can be easily calculated by a simple
formula. The claims of all Collective Members arise from a common nucleus of facts.

1 Liability is based on a systematic course of wrongful conduct by the Defendants that
2 caused harm to all of the Collective Members.

3 47. As such, Plaintiffs bring their FLSA overtime wage claim as a collective
4 action on behalf of the following class:

5
6 **The FLSA Collective Members are all of Defendants' current**
7 **and former general laborers who were not paid one and one half**
8 **times their regular rates of pay for time spent working in excess**
9 **of 40 hours in a given workweek, starting three years before this**
10 **lawsuit was filed up to the present.**

11 48. Defendants' unlawful conduct, as described in this Collective Action
12 Complaint, is pursuant to Defendants' corporate policy or practice of minimizing labor
13 costs by refusing and/or failing to properly compensate its employees according to the
14 FLSA.

15 49. Defendants are aware or should have been aware that federal law prohibited
16 them from not paying their general laborers—namely, Plaintiff Evans and the Collective
17 Members—an overtime premium wage for time spent working in excess of 40 hours per
18 given workweek.

19 50. Defendants' unlawful conduct has been widespread, repeated, and
20 consistent.

21 51. This action is properly brought and maintained as an opt-in collective
22 action pursuant to 29 U.S.C. § 216(b).

23 52. Upon information and belief, the individuals similarly situated to Plaintiff
24 Evans include more than thirty (30) employees currently and/or formerly employed by
25 Defendants, and Plaintiff Evans is unable to state the precise number of similarly-situated
26
27

1 employees because that information is solely in Defendants' possession, custody, or
2 control, but it can be readily ascertained from their employment records and the records
3 of Defendants' payroll processor.

4 53. Notice can be provided to the Collective Members by First Class Mail to
5 the last address known to Defendants, via email at the last known email address known to
6 Defendants, and by text message to the last known telephone number known to
7 Defendants.
8

9 **DAMAGES**

10 54. Plaintiff Evans and the Collective Members reallege and incorporate by
11 reference all allegations in all preceding paragraphs.
12

13 55. Plaintiff Evans and the Collective Members are entitled to recover overtime
14 compensation for the hours they worked in excess of 40 per given workweek for which
15 they were not paid at the federally mandated one and one half times their regular rates of
16 pay.
17

18 56. Plaintiff Evans and the Collective Members are also entitled to an amount
19 equal to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).
20

21 57. Plaintiff Evans and the Collective Members are also entitled to recover
22 their attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).
23

24 **COUNT ONE: FAIR LABOR STANDARDS ACT**
FAILURE AND/OR REFUSAL TO PAY OVERTIME

25 58. Plaintiff Evans and the Collective Members reallege and incorporate by
26 reference all allegations in all preceding paragraphs
27

1 59. In a given workweek, and during each and every workweek, during which
2 Plaintiff Evans and the Collective Members were employed by Defendants, they
3 regularly and consistently worked approximately ten (10) hours of overtime per week,
4 and Defendants did not pay Plaintiff Evans and the Collective Members one and one-half
5 times their regular rate of pay for such time worked.
6

7 60. As a result, Defendants have intentionally failed and/or refused to pay
8 Plaintiff Evans and the Collective Members overtime according to the provisions of the
9 FLSA.
10

11 61. Defendants further have engaged in a widespread pattern and practice of
12 violating the provisions of the FLSA by failing to pay Plaintiff Evans and the Collective
13 Members in accordance with 29 U.S.C. § 207.
14

15 62. Although at this stage, Plaintiff Evans and the Collective Members are
16 unable to state the exact amount owed for all time worked during the course of their
17 employment, such information will become available during the course of discovery.
18 Furthermore, when an employer fails to keep complete and accurate time records,
19 employees may establish the hours worked by their testimony, and the burden of
20 overcoming such testimony shifts to the employer.
21

22 63. Defendants knew that – or acted with reckless disregard as to whether –
23 their refusal or failure to properly compensate Plaintiff Evans and the Collective
24 Members over the course of their employment would violate federal and state law, and
25 Defendants were aware of the FLSA overtime wage requirements during their
26 employment. As such, Defendants' conduct constitutes a willful violation of the FLSA.
27

1 64. Defendants have and continue to willfully violate the FLSA by not paying
2 Plaintiff Evans and the Collective Members a wage equal to one and one half times their
3 regular rate of pay for all time spent performing labor for Defendants in excess of her
4 regular 40-hour workweek.

5 65. As a result of Defendants failure or refusal to pay Plaintiff Evans and the
6 Collective Members a wage equal to one and one-half times their regular rate of pay for
7 work they performed for Defendants in excess of their regular 40-hour workweek,
8 Defendants violated 29 U.S.C. § 207(a). Plaintiff Evans and the Collective Members are
9 therefore entitled to compensation of one and one-half times their regular rate of pay, to
10 be proven at trial, plus an additional equal amount as liquidated damages, together with
11 interest, reasonable attorney's fees, and costs.
12

13 **WHEREFORE**, Plaintiff, John M. Evans, III and the Collective Members
14 individually, and on behalf of all others similarly situated, requests that this Court enter
15 Judgment against Defendants Yanesh Brothers Construction Co., Inc.; Charles Yanesh,
16 William Yanesh and William Yanesh, Jr., in Plaintiff Evans' and the Collective
17 Members' favor:
18

- 19 a. Awarding Plaintiff Evans and the Collective Members overtime
20 compensation in the amount due to them for all their time worked in excess
21 of forty (40) hours per work week at an amount equal to one-and-one-half
22 times their regular rate while working at Yanesh Brothers Construction,
23 Co., Inc.
24
25
26
27

- 1 b. Awarding Plaintiff Evans and the Collective Members liquidated damages
2 in an amount equal to the overtime award;
- 3 c. Awarding Plaintiff Evans and the Collective Members reasonable
4 attorneys' fees and costs and expenses of the litigation pursuant to 29
5 U.S.C. § 216(b);
- 6 d. For Plaintiff Evans' and the Collective Members' costs incurred in this
7 action;
- 8 e. Awarding Plaintiff Evans and the Collective Members pre-judgment
9 interest, at the highest legal rate, on all amounts set forth in subsections (a)
10 and (b) above from the date of the payment due for that pay period until
11 paid in full;
- 12 f. Awarding Plaintiff Evans and the Collective Members post-judgment
13 interest, at the highest legal rate, on all amounts from the date of such
14 award until paid in full;
- 15 g. For such other and further relief as the Court deems just and proper.

16
17
18
19
20 RESPECTFULLY SUBMITTED this 28th day of September, 2017.

21 THE BENDAU LAW FIRM, PLLC

22 By: /s/ Clifford P. Bendau, II
23 Clifford P. Bendau, II (OH# 0089601)
24 Christopher J. Bendau
25 THE BENDAU LAW FIRM PLLC
26 P.O. Box 97066
27 Phoenix, Arizona 85060
 Telephone AZ: (480) 382-5176
 Telephone OH: (216) 395-4226
 Facsimile: (602) 304-3805

Email: cliffordbendau@bendaulaw.com

By: /s/ James L. Simon

James L. SIMON (OH# 0089483)

6000 Freedom Square Drive

Freedom Square II – Suite 165

Independence, Ohio 44131

Telephone: (216) 525-8890

Facsimile: (216) 642-5814

Email: jameslsimonlaw@yahoo.com

Counsel for Plaintiff